

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

In re Terrorist Attacks on September 11, 2001	03 MDL 1570 (GBD)(SN) ECF Case
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This document relates to:

Roberta Agyeman, et al. v. Islamic Republic of Iran, No. 1:18-cv-05320 (GBD)(SN)

**MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR LEAVE TO
AMEND TO CORRECT ERRORS**

Plaintiffs by undersigned counsel submit this Memorandum of Law in Support of Motion for Leave to Amend to Correct Errors, and say:

BACKGROUND

Plaintiffs are comprised of personal representatives and eligible family members of individuals killed in the terrorist attacks against the United States on September 11, 2001 (the “September 11th Attacks”). The only defendant in this case is Iran. On June 15, 2018, Plaintiffs commenced suit against Iran by the filing of a Complaint. ECF 7.¹ Iran was served on July 19, 2018 pursuant to 1608(a)(4). ECF 25. Iran failed to serve an answer or otherwise file a responsive pleading within sixty (60) days after service, and the Clerk issued a Certificate of Default on January 28, 2019. ECF 54. Plaintiffs have not yet applied for either a finding of liability or a judgment on damages.

Plaintiffs’ counsel conducted extensive quality control before filing and has continued its quality control process after filing the Complaint, during which time it has continued to obtain additional information from clients and family members of clients to complete its files. In so doing, counsel has determined that certain minor errors were contained in the Complaint filed in

¹ All ECF citations are to the individual docket in *Roberta Agyeman, et al. v. Islamic Republic of Iran, No. 1:18-cv-05320 (GBD)(SN)*

the above-referenced matter, such as name misspellings, incorrect states of residence, and certain plaintiffs were incorrectly identified with respect to their relationship to the individual who died in the September 11th Attacks (e.g., a sibling of the victim incorrectly identified as a child). None of the corrections constitute substantial changes that would potentially warrant additional service of an amended pleading on Iran.

Through the instant Motion, Plaintiffs seek to correct such errors before proceeding to default judgment so as to ensure the record is accurate. None of the modifications requested herein affect the substantive claims or relief sought. No new claims are asserted, and no additional plaintiffs have been added. Moreover, because the changes are insubstantial, no additional service on Iran is required.

ARGUMENT

I. LEGAL STANDARD

The Federal Rules of Civil Procedure make clear that leave to amend the complaint should be "freely given when justice so requires." Fed. R. Civ. P. 15(a). "This 'permissive standard . . . is consistent with [the] strong preference for resolving disputes on the merits.'" *Media Glow Dig., LLC v. Panasonic Corp. of N. Am.*, 2018 U.S. Dist. LEXIS 207922, at *12 (S.D.N.Y. Dec. 10, 2018) quoting *Loreley Fin. (Jersey) No. 3 Ltd. v. Wells Fargo Sec., LLC*, 797 F.3d at 190. Leave to amend should only be denied in "instances of futility, undue delay, bad faith or dilatory motive, repeated failure to cure deficiencies by amendments previously allowed, or undue prejudice to the non-moving party." *Burch v. Pioneer Credit Recovery, Inc.*, 551 F.3d 122, 126 (2d Cir. 2008). It is well settled that "[d]istrict courts are vested with broad discretion to grant a party leave to amend the pleadings." *Ruggles v. Wellpoint, Inc.*, 687 F. Supp. 2d 30, 33 (N.D.N.Y. 2009).

A. Plaintiff's Request for Leave to Amend Should Be Granted Under the Permissive Standard Set Forth In Rule 15(a).

Here, Plaintiffs only seek to correct what can best be characterized as typographical errors. There are no new claims asserted or any change in the substantive relief sought. Instead, the record will be made to accurately reflect the names, states of residence, and other data of each of the Plaintiffs. Such proposed amendments, as specifically itemized below, clearly do not constitute “instances of futility, undue delay, bad faith or dilatory motive, repeated failure to cure deficiencies by amendments previously allowed, or undue prejudice to the non-moving party” and, therefore, should be permitted. *Burch v. Pioneer Credit Recovery, Inc.*, 551 F.3d 122, 126 (2d Cir. 2008).

i. Plaintiff Name Corrections:

The following Plaintiff's names were misspelled or provide a more specific Personal Representative designation:

	Case Number	Plaintiff's Name as Pled	Plaintiff's Name as Amended
1.	4th Amendment 1:18-cv-05320	Akinshara, Monica	Akinshara, Monica ALSO KNOWN AS Akinshara, Delores
2.	1st Amendment 1:18-cv-05320	Aldridge, Delores	Aldridge, Delores ALSO KNOWN AS Delores Aldridge Essuon
3.	1st Amendment 1:18-cv-05320	Callori-Amatuccio, Antoinette	Callori, Antoinette R. ALSO KNOWN AS Amatuccio, Antoinette
4.	1st Amendment 1:18-cv-05320	Asaro, Philip	Asaro, Phillip
5.	2nd Amendment 1:18-cv-05320	Barnes-Robinson, Zulemana	Barnes-Robinson, Zulema
6.	1:18-cv-05320	Biggart, Margaret	Biggart, Margaret ALSO KNOWN AS Burke, Margaret
7.	1:18-cv-05320	Carter-Perry, Freddy	Carter-Perry, Freddy ALSO KNOWN AS Carter-Perry, Freddy Jean

	Case Number	Plaintiff's Name as Pled	Plaintiff's Name as Amended
8.	3rd Amendment 1:18-cv-05320	Chada-Merritt, Tammy M.	Merritt, Tammy Marie ALSO KNOWN AS Merritt, Tammy Marie Chada
9.	1:18-cv-05320	Colon-Concepcion, Juana	Colon, Juana
10.	1:18-cv-05320	Hornback, Michele L.	Hornback, Michelle L.
11.	4th Amendment 1:18-cv-05320	DeConto-LeBlanc, Marie	LeBlanc, Marie DeConto
12.	3rd Amendment 1:18-cv-05320	Marisay, Robert	Marisay Jr., Robert E.
13.	3rd Amendment 1:18-cv-05320	Alexander-McGee, Linda	McGee, Linda
14.	1:18-cv-05320	Reoch-Moriarty, Karen	Reoch, Karen Ann
15.	3rd Amendment 1:18-cv-05320	Rivera Sr., Urial	Rivera Sr., Uriel
16.	3rd Amendment 1:18-cv-05320	Rivera Jr., Urial	Rivera Jr., Uriel
17.	1:18-cv-05320	Sufilka, Erika	Sufilka, Erika ALSO KNOWN AS Sufilka, Erika C.
18.	1:18-cv-05320	Allen, Denise	Allen, Denise, individually, as surviving parent of Richard L. Allen, and as the Personal Representative of the Estate of Richard L. Allen, deceased, and on behalf of all survivors and all legally entitled beneficiaries and family members of Richard L. Allen
19.	1:18-cv-05320	Alonso, Robert C.	Alonso, Robert C., individually, as surviving spouse of Janet Alonso, and as the Personal Representative of the Estate of Janet Alonso, deceased, and on behalf of all survivors and all legally entitled beneficiaries and family members of Janet Alonso
20.	1:18-cv-05320	Amatuccio, Debra	Amatuccio, Debra, individually, as surviving spouse of Joseph Amatuccio, and as the Personal Representative of the Estate of Joseph Amatuccio, deceased, and on behalf of all survivors and all legally entitled beneficiaries and family members of Joseph Amatuccio
21.	1:18-cv-05320	Asaro, Heloiza	Asaro, Heloiza, individually, as surviving spouse of Carl Asaro, and as the Personal Representative of the Estate of Carl Asaro, deceased, and on behalf of all survivors and all legally entitled beneficiaries and family members of Carl Asaro

	Case Number	Plaintiff's Name as Pled	Plaintiff's Name as Amended
22.	1:18-cv-05320	Audiffred, Robin	Audiffred, Robin, individually, as surviving spouse of James Audiffred, and as the Personal Representative of the Estate of James Audiffred, deceased, and on behalf of all survivors and all legally entitled beneficiaries and family members of James Audiffred
23.	1:18-cv-05320	Baierwalter, Laura	Baierwalter, Laura individually, as surviving spouse of Robert J. Baierwalter, and as the Personal Representative of the Estate of Matthew Barnes, deceased, and on behalf of all survivors and all legally entitled beneficiaries and family members of Robert J. Baierwalter
24.	1:18-cv-05320	Barnes-Ford, Susan	Barnes-Ford, Susan, individually, as surviving spouse of Matthew Barnes, and as the Personal Representative of the Estate of Matthew Barnes, deceased, and on behalf of all survivors and all legally entitled beneficiaries and family members of Matthew Barnes
25.	1:18-cv-05320	Barnes, Ricardo	Barnes, Ricardo, individually, as surviving spouse of Shelia P. Barnes, and as the Personal Representative of the Estate of Shelia P. Barnes, deceased, and on behalf of all survivors and all legally entitled beneficiaries and family members of Shelia P. Barnes
26.	1:18-cv-05320	Boccardi, Carol	Boccardi, Carol, individually, as surviving parent of Michael A. Boccardi, and as the co-Personal Representative of the Estate of Michael A. Boccardi, deceased, and on behalf of all survivors and all legally entitled beneficiaries and family members of Michael A. Boccardi
27.	1:18-cv-05320	Boccardi, Michael	Boccardi, Michael, individually, as surviving parent of Michael A. Boccardi, and as the co-Personal Representative of the Estate of Michael A. Boccardi, deceased, and on behalf of all survivors and all legally entitled beneficiaries and family members of Michael A. Boccardi

	Case Number	Plaintiff's Name as Pled	Plaintiff's Name as Amended
28.	1:18-cv-05320	Bowen, Eugene	Bowen, Eugene, individually, as surviving spouse of Donna Bowen, and as the Personal Representative of the Estate of Donna Bowen, deceased, and on behalf of all survivors and all legally entitled beneficiaries and family members of Donna Bowen
29.	1:18-cv-05320	Buck, Laura	Buck, Laura, individually, as surviving child of Georgine R. Corrigan, and as the Personal Representative of the Estate of Georgine R. Corrigan, deceased, and on behalf of all survivors and all legally entitled beneficiaries and family members of Georgine R. Corrigan
30.	1:18-cv-05320	Caballero, Maria	Caballero, Maria, individually, as surviving parent of Daniel M. Caballero, and as the Personal Representative of the Estate of Daniel M. Caballero, deceased, and on behalf of all survivors and all legally entitled beneficiaries and family members of Daniel M. Caballero
31.	1:18-cv-05320	Cachia, Joseph	Cachia, Joseph, individually, as surviving parent of Brian Cachia, and as the Personal Representative of the Estate of Brian Cachia, deceased, and on behalf of all survivors and all legally entitled beneficiaries and family members of Brian Cachia
32.	1:18-cv-05320	Calixte-Williams, Marguerite	Calixte-Williams, Marguerite, individually, as surviving parent of Felix Calixte, and as the Personal Representative of the Estate of Felix Calixte, deceased, and on behalf of all survivors and all legally entitled beneficiaries and family members of Felix Calixte
33.	1:18-cv-05320	Carson, Debra	Carson, Debra, individually, as surviving spouse of James Carson Jr., and as the Personal Representative of the Estate of James Carson Jr., deceased, and on behalf of all survivors and all legally entitled beneficiaries and family members of James Carson Jr.
34.	1:18-cv-05320	Chada, Virginia	Chada, Virginia, individually, as surviving spouse of John Chada, and as the Personal Representative of the Estate of John Chada, deceased, and on behalf of all survivors and all legally entitled beneficiaries and family members of John Chada

	Case Number	Plaintiff's Name as Pled	Plaintiff's Name as Amended
35.	1:18-cv-05320	Cherry-Daniel, Selena	Cherry-Daniel, Selena, individually, as surviving child of Vernon P. Cherry, and as the Personal Representative of the Estate of Vernon P. Cherry, deceased, and on behalf of all survivors and all legally entitled beneficiaries and family members of Vernon P. Cherry
36.	1:18-cv-05320	Clark, LaShawn	Clark, LaShawn, individually, as surviving spouse of Benjamin K. Clark, and as the Personal Representative of the Estate of Benjamin K. Clark, deceased, and on behalf of all survivors and all legally entitled beneficiaries and family members of Benjamin K. Clark
37.	1:18-cv-05320	Cloud, Mio	Cloud, Mio, individually, as surviving spouse of Geoffrey Cloud, and as the Personal Representative of the Estate of Geoffrey Cloud, deceased, and on behalf of all survivors and all legally entitled beneficiaries and family members of Geoffrey Cloud
38.	1:18-cv-05320	Cohen-Day, Joyce	Cohen-Day, Joyce, individually, as surviving child of Florence Cohen, and as the Personal Representative of the Estate of Florence Cohen, deceased, and on behalf of all survivors and all legally entitled beneficiaries and family members of Florence Cohen
39.	1:18-cv-05320	Conway, Russell	Conway, Russell, individually, as surviving spouse of Brenda E. Conway, and as the Personal Representative of the Estate of Brenda E. Conway, deceased, and on behalf of all survivors and all legally entitled beneficiaries and family members of Brenda E. Conway
40.	1:18-cv-05320	Cordero, Moises	Cordero, Moises, individually, as surviving parent of Alejandro Cordero, and as the Personal Representative of the Estate of Alejandro Cordero, deceased, and on behalf of all survivors and all legally entitled beneficiaries and family members of Alejandro Cordero
41.	1:18-cv-05320	Costanza, John	Costanza, John, individually, as surviving spouse of Digna Costanza, and as the Personal Representative of the Estate of Digna Costanza, deceased, and on behalf of all survivors and all legally entitled beneficiaries and family members of Digna Costanza

	Case Number	Plaintiff's Name as Pled	Plaintiff's Name as Amended
42.	1:18-cv-05320	Coyle, James	Coyle, James, individually, as surviving parent of James R. Coyle, and as the Personal Representative of the Estate of James R. Coyle, deceased, and on behalf of all survivors and all legally entitled beneficiaries and family members of James R. Coyle
43.	1:18-cv-05320	Cubas, Carol	Cubas, Carol, individually, as surviving spouse of Kenneth J. Cubas, and as the Personal Representative of the Estate of Kenneth J. Cubas, deceased, and on behalf of all survivors and all legally entitled beneficiaries and family members of Kenneth J. Cubas
44.	1:18-cv-05320	Davidson, Daniel	Davidson, Daniel, as the co-Personal Representative of the Estate of Lawrence Davidson, deceased, and on behalf of all survivors and all legally entitled beneficiaries and family members of Lawrence Davidson
45.	1:18-cv-05320	DeConto, David	DeConto, David, individually, as surviving sibling of Gerald F. DeConto, and as the Personal Representative of the Estate of Gerald F. DeConto, deceased, and on behalf of all survivors and all legally entitled beneficiaries and family members of Gerald F. DeConto
46.	1:18-cv-05320	Frederick, Lafayette	Frederick, Lafayette, individually, as surviving spouse of, and as the Personal Representative of the Estate of Jacquelyn D. Aldridge, deceased, and on behalf of all survivors and all legally entitled beneficiaries and family members of Jacquelyn D. Aldridge
47.	1:18-cv-05320	Mosobbir, Abdul	Mosobbir, Abdul, individually, as surviving sibling of, and as the Personal Representative of the Estate of Shabbir Ahmed, deceased, and on behalf of all survivors and all legally entitled beneficiaries and family members of Shabbir Ahmed
48.	1:18-cv-05320	Sampson, Stephanie Marie (Clarke)	Sampson, Stephanie Marie (Clarke), individually, as surviving child of Donna Clarke, and as the Personal Representative of the Estate of Donna Clarke, deceased, and on behalf of all survivors and all legally entitled beneficiaries and family members of Donna Clarke

	Case Number	Plaintiff's Name as Pled	Plaintiff's Name as Amended
49.	1:18-cv-05320	Tillman, Carrie	Tillman, Carrie, as the Personal Representative of the Estate of Veronique N. Bowers, deceased, and on behalf of all survivors and all legally entitled beneficiaries and family members of Veronique N. Bowers

ii. Decedent Name Corrections:

The following Decedent's names were misspelled:

	Case Number	Decedent's Name as Pled	Decedent's Name as Amended
1.	1:18-cv-05320	Alvarez, Javier A.	Alvarez, Antonio J.

iii. Plaintiffs Whose Claim is Solely in Individual Capacity

The following Plaintiffs only have a solatium claim and are not the administrators of an estate:

	Case Number	Plaintiff's Name	Claim as Pled	Claim as Amended
1.	1:18-cv-05320	Ayala, Samantha	Solatium/Wrongful Death	Solatium
2.	1:18-cv-05320	Davidson, William	Solatium/Wrongful Death	Solatium

iv. Plaintiffs Whose Relationship to 9/11 Decedent is Incorrectly described:

The familial relationship to the 9/11 Decedent of the following Plaintiffs was incorrectly described:

	Case Number	Plaintiff's Name	Plaintiff's Relationship to 9/11 Decedent as Pled	Plaintiff's Relationship to 9/11 Decedent as Amended
1.	1:18-cv-05320	Ayala, Samantha	Daughter/PR	Daughter
2.	1:18-cv-05320	Davidson, William	Brother/PR	Brother

B. No Additional Service Is Required Because The Changes Contained In The Amended Pleadings Are Insubstantial.

In this case, Plaintiffs properly served Iran in accordance with the Foreign Sovereign Immunities Act and, after Iran failed to timely respond, the Clerk of Court issued a Certificate of Default. *See* ECF 54. Plaintiffs now seek to make the aforementioned corrections, which are insubstantial. It is well settled that no additional service is required under these circumstances: “Where a plaintiff serves a complaint on a foreign state defendant under the FSIA, the foreign state defaults, and then the plaintiff files an amended complaint, service of the new complaint is only necessary if the changes are ‘substantial.’” *Shoham v. Islamic Republic of Iran*, 922 F. Supp. 2d 44, 47 (D.D.C. 2013) *citing*, *Belkin v. Islamic Republic of Iran*, 667 F. Supp. 2d 8, 20 (D.D.C. 2009) (“Service of the original complaint was effected on all three Defendants under 28 U.S.C. § 1608(a)(4). Plaintiff did not serve the amended complaint on defendants. Where changes made in an amended complaint are ‘not substantial,’ the requirement of Rule 5(a)(2) of the Federal Rules of Civil Procedure that a pleading that states a new claim for relief against a party in default must be served on that party is not applicable.”); *Blais v. Islamic Republic of Iran*, 459 F. Supp. 2d 40, 46 (D.D.C. 2006) (“Even were these changes characterized as substantive Iran, the MOIS and the IRGC had fair notice of the allegations and relief sought, because the changes to the third amended complaint were not substantial. ...Accordingly, this Court will not require plaintiff to serve the amended complaint.”); *Dammarell v. Islamic Republic of Iran*, 370 F. Supp. 2d 218, 225 (D.D.C. 2005) (“[S]ection 1608 is inapplicable in the setting where the defendant foreign state has failed to appear, and is therefore in default, and where an amendment does not add any claims but instead clarifies existing claims.”)

In this case, the Plaintiffs only seek to correct typographical errors and certain inaccuracies regarding the relationship of the Plaintiff to the September 11th decedent, or to

otherwise clarify the record. Because these changes are insubstantial, no additional service of the amended pleadings should be required.

CONCLUSION

The corrections requested by Plaintiffs are clerical in nature and serve to clarify the record. They do not affect the substance of any claims made in the above-referenced action. Moreover, the corrections are necessary to the administration of justice inasmuch as not making them will potentially affect the rights of the incorrectly identified plaintiffs to enforce and collect on any judgment this Court enters in their favor. For the foregoing reasons, plaintiffs respectfully request that this Court permit the proposed amendments without requiring service on Iran.

Dated: March 21, 2019

/s/ Jerry S. Goldman

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